

In re: DAVID PHELPS )  
DANNY CLAYTON )  
CARRIE NELSEN )  
MARY LAMIE and ) OEIG Case: 09-00715  
MARK WORKMAN )

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

Some of the allegations involve matters that the Commission adjudicated in two prior proceedings: *Meza v. Clayton*, (11-EEC-012) and *Meza v. Nelsen*, (11-EEC-011). The Commission, having already made and released final determinations concerning these allegations, has redacted them from this report.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

[The six-page Table of Contents has been redacted.]

## **I. Allegations**

### **A. Initial Allegations**

The Office of Executive Inspector General (“OEIG”) for the Agencies of the Illinois Governor received a complaint alleging that Illinois Department of Transportation (“IDOT” or “Department”) employees Danny Clayton and David Phelps circumvented IDOT hiring rules for IDOT’s District Nine 2009 Summer Program. It was further alleged that Mr. Clayton did not work the hours reported on his IDOT timekeeping records.

### **B. Additional Allegations**

During the course of the investigation, the OEIG discovered evidence of other misconduct by Mr. Clayton, Mr. Phelps, and other employees of IDOT. First, the investigation revealed that Mr. Clayton manipulated IDOT employment postings. Second, the investigation also revealed that Mr. Clayton and Mr. Phelps engaged in consultant ranking practices involving GeoTech Engineering & Testing, Inc. (“GeoTech”) that constituted a conflict of interest. Third, Mr. Clayton failed to disclose his secondary employment to IDOT. Fourth, the OEIG discovered that Mr. Phelps engaged in practices that violated the IDOT Employee ethics policy. Fifth, IDOT employees Carrie Nelsen and Mary Lamie intentionally solicited and accepted prohibited gifts, [redacted] from GeoTech Executive Vice President Mark Workman. Sixth, [The Commission is exercising its discretion to redact this sentence]. Seventh, [The allegations contained in this sentence were the subject of 11-EEC-011, and 11-EEC-012, released by the Commission on 11/29/12 and 7/25/12, respectively. The Commission is exercising its discretion to redact this sentence.].

## **II. Subject Background**

### **A. Danny Clayton**

Danny Clayton is IDOT’s Assistant to the Region Five Engineer (Mary Lamie). Mr. Clayton coordinates the daily activities and program development of IDOT’s District Nine Bureaus. District Nine’s offices are located in Carbondale, Illinois.

### **B. David Phelps**

David Phelps is IDOT’s Assistant Secretary. In 2003, former Governor Rod Blagojevich appointed Mr. Phelps as Assistant Secretary. In this position, Mr. Phelps undertakes tasks assigned by the Secretary. Although Mr. Phelps’s term of appointment expired on January 15,

2007, he is still serving as Assistant Secretary. Mr. Phelps works from IDOT's office in Harrisburg, Illinois.

**C. Carrie Nelsen**

Carrie Nelsen is IDOT's District Nine Bureau Chief of Program Development. Her duties include, among other things, reviewing consultant contracting bids and reporting to Mr. Clayton. Ms. Nelsen works from District Nine's offices in Carbondale, Illinois.

**D. Mary Lamie**

Mary Lamie is IDOT's Region Five Engineer and is the direct supervisor of Danny Clayton. [Sentence redacted.] Ms. Lamie works from IDOT's office in Collinsville, Illinois.

**E. Mark Workman**

Mark Workman is GeoTech's Executive Vice President. GeoTech is a road construction consulting firm with offices in Marion, Illinois and four other cities. Since 2006, GeoTech has received contracts in five of the nine IDOT districts. GeoTech presently has active contracts in IDOT Districts Three and Four.

**III. OEIG Investigation Relating to Danny Clayton**

**A. 2009 Summer Program Hiring Improprieties Allegations**

[The allegations contained in this section were the subject of 11-EEC-012, released by the Commission on 11/29/12. The Commission is exercising its discretion to redact this section, which consists of six paragraphs and one footnote.]<sup>1</sup>

**B. Time Abuse Allegation**

*i. Review of Danny Clayton's Timekeeping Records*

OEIG investigators obtained and reviewed copies of Danny Clayton's timesheets for dates between October 1, 2008 and July 31, 2009. According to these records, Mr. Clayton reported spending 185.75 hours working at the Illinois 34 Highway Project during this time period. The 185.75 hours of work accounts for nearly 25 work days or the equivalent of \$10,555.55 in wages.

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<sup>1</sup> [Redacted].

ii. *Interviews of Danny Clayton Regarding Timekeeping*

1. First Interview of Danny Clayton

During his October 5, 2010 OEIG interview, Danny Clayton said he often reports to a construction site in the morning and as a result is not usually in the office at his scheduled start time. Mr. Clayton further stated that nobody could verify his activity when he is out of the office because he never informs his staff of his location.

2. Second Interview of Danny Clayton

During his November 9, 2010 OEIG interview, Danny Clayton said he maintained accurate timesheets and that his supervisor, Mary Lamie, was apprised of his location and activities because she received copies of his timesheets. Investigators presented Mr. Clayton with his timekeeping records for dates between October 2008 and July 2009 and noted that he had reported spending a substantial amount of time at the Illinois 34 Highway Project. In response, Mr. Clayton said he felt it was important for him to maintain a presence at job sites.

iii. *Investigative Activity Following Danny Clayton's Interviews*

On December 2, 2010, OEIG investigators interviewed [REDACTED]. During the interview, [REDACTED] said that IDOT had four projects on Illinois 34 in Saline County between October 2008 and July 2009 and that [REDACTED] stated that Mr. Clayton had visited the Illinois 34 worksites only a few times.

[REDACTED] also informed OEIG investigators that he maintained a diary for all of his projects, including the Illinois 34 Highway Projects. [REDACTED] recorded in his diaries all visits from IDOT staff, including the Assistant to the Region Five Engineer (Danny Clayton), daily updates on specific project progress, and detailed weather analysis. Investigators asked [REDACTED] if Mr. Clayton could have visited the Illinois 34 worksite even though [REDACTED]'s diary did not reflect a visit from Mr. Clayton. In response, [REDACTED] said that he made a record of every supervisor's visit, including visits from Mr. Clayton.<sup>2</sup>

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<sup>2</sup> [REDACTED] said that Mr. Clayton could have driven through the Illinois 34 Highway Project, but that does not constitute a site visit.

OEIG investigators obtained and examined copies of [REDACTED]'s work diaries for dates between October 1, 2008 and July 31, 2009. According to [REDACTED]'s diary entries, Mr. Clayton visited the Illinois 34 worksites on two occasions, July 9 and 10, 2010.

### **C. IDOT Employment Posting Revisions Allegation**

#### *i. Witness Interviews Regarding Employment Posting Revisions*

OEIG investigators interviewed [REDACTED], [REDACTED], and [REDACTED], all of whom had involvement with District Nine hiring. [REDACTED] and [REDACTED] each informed investigators that Mr. Clayton had been attempting to have his son, [REDACTED] Clayton, hired by IDOT for nearly four years.<sup>3</sup> [REDACTED] noted that [REDACTED] Clayton had not applied for a Department position, because there were no positions for which he was qualified. In addition, [REDACTED] and [REDACTED] each said that Mr. Clayton altered Civil Engineering employment postings, which they concluded Mr. Clayton did in order to improve [REDACTED] Clayton's probability of being hired. Specifically, [REDACTED] said Mr. Clayton removed a requirement in several postings that candidates have a Bachelor's Degree in Civil Engineering. According to [REDACTED], [REDACTED] Clayton does not possess a Bachelor's Degree in Civil Engineering. He is a construction engineer and holds a General Engineering degree.

#### *ii. Review of Documents Related to Civil Engineering Job Postings*

OEIG investigators obtained and reviewed emails and draft job postings relating a "District Nine Civil Engineering Trainee" opening, which was posted in February 2010. The initial posting included the requirement that candidates hold a Bachelor of Science Degree with a concentration in Civil Engineering. On February 2, 2010, [REDACTED] sent the job posting to Mr. Clayton via email and asked if any job criteria needed revision. On February 4, 2010, [REDACTED] returned the posting to [REDACTED] via email with the Civil Engineering degree requirement removed from the applicant criteria. [REDACTED] copied Mr. Clayton on the February 4, 2010 email to [REDACTED].

#### *iii. Interviews of Danny Clayton Regarding Employment Postings*

##### **1. First Interview of Danny Clayton**

During his October 5, 2010 OEIG interview, Danny Clayton denied discussing with District Nine staff the possibility of having his son hired at IDOT, and further denied altering the hiring criteria or causing the hiring criteria to be altered for any position in order to help his son.

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<sup>3</sup> Both individuals stated that Mr. Clayton always raised this issue during face-to-face discussions and never through email.

## 2. Second Interview of Danny Clayton

During his November 9, 2010 OEIG interview, Danny Clayton reiterated that he never discussed the possibility of hiring his son for an IDOT position. Additionally, Mr. Clayton noted that he did not alter any job postings in an effort to favor his son. After investigators reminded him of his duty to cooperate, Mr. Clayton said he informed [REDACTED] that his son wanted a job at IDOT, but denied asking anyone to hire his son. Mr. Clayton admitted, however, that he had changed one engineering posting in order to favor construction engineers, like his son, and ordered [REDACTED] to do so as well.

### **D. Consultant Ranking Improprieties Allegation**

#### *i. Witness Interviews Regarding Consultant Rankings*

OEIG investigators interviewed IDOT employees Carrie Nelsen, [REDACTED], [REDACTED], and [REDACTED] regarding the IDOT consultant ranking process. During their interviews, each individual stated that IDOT employs a rigorous process for selecting consultants. Firms seeking an IDOT contract are required to submit a Statement of Interest that details the estimated cost of the project and other relevant information. Thereafter, engineers, like [REDACTED] and [REDACTED], rank the firms based on a number of factors, including geographical location, and forward their findings to Ms. Nelsen, who then examines the engineers' findings and submits a recommendation to Mary Lamie. Ms. Lamie evaluates the rankings before sending them to the IDOT Consultant Selection Committee ("Selection Committee").

[REDACTED] and [REDACTED] each stated that Mr. Clayton frequently requested that employees change GeoTech's ranking to ensure that GeoTech was selected for District Nine projects.<sup>4</sup> [REDACTED] recalled that on one occasion, he ranked GeoTech eighth of seventeen bidders for a May 2006 project. On another occasion, [REDACTED] ranked GeoTech fifth (April 2009 project). According to [REDACTED], Ms. Nelsen altered GeoTech's ranking for both projects to ensure that GeoTech was eventually selected. During her OEIG interviews, Ms. Nelsen indicated that she advanced GeoTech's ranking on a number of occasions pursuant to Mr. Clayton's direction. According to Ms. Nelsen, Mr. Clayton's directives regarding GeoTech were always made orally and never via email. [REDACTED], informed OEIG investigators that she was aware that Mr. Clayton altered consultant rankings before the Selection Committee reviewed the consultants' Statements of Interest. [REDACTED] also said that Mr. Clayton's conduct did not

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<sup>4</sup> [REDACTED] also said that employees throughout District Nine joked that the consultant ranking process was irrelevant because Mr. Clayton would ensure that GeoTech was selected.

concern her because she believed he had “little influence” over the Selection Committee’s review of the rankings and its ultimate determination.

*ii. Review of Documents Pertaining to Consultant Rankings*

OEIG investigators obtained and reviewed copies of [REDACTED] and Ms. Nelsen’s rankings regarding projects for which GeoTech submitted a bid. A review of these records revealed that between June 2006 and March 2009, Ms. Nelsen improved GeoTech’s ranking by at least four positions from [REDACTED]’s recommendation on each of the four District Nine submissions for which GeoTech prequalified. On each occasion, Ms. Nelsen increased GeoTech’s rank beyond those of firms located in central and northern Illinois and into a position to obtain a consulting contract.

*iii. Interview of Danny Clayton Regarding Consultant Rankings*

During his October 5, 2010 OEIG interview, Danny Clayton said he never demanded any employee alter a consultant’s ranking. However, Mr. Clayton did state that he favors local companies, like GeoTech, because local companies would have lower travel expenses and that would save the Department money. To that end, Mr. Clayton said that he often questioned why local companies were not ranked above companies from other parts of the State. Investigators asked Mr. Clayton if these local companies provided any gifts to the Department, such as gift cards. In response, Mr. Clayton said he did not know.

**E. Failure to Disclose Outside Employment Allegation**

*i. Review of Documents Pertaining to Danny Clayton’s Outside Employment*

OEIG investigators obtained and reviewed copies of Danny Clayton’s Statements of Economic Interests, which he filed with the Illinois Secretary of State between 2004 and 2009. During each of these years, Mr. Clayton reported that he worked for Southern Illinois Land Company, Inc., which was previously called the Sahara Coal Company, Inc., and Harrisburg Township. Mr. Clayton, however, never submitted or filed Secondary Employment forms with IDOT for either of these two positions.

*ii. Interview of Danny Clayton Regarding Outside Employment*

During his October 5, 2010 OEIG interview, Danny Clayton said he is an Advisor for Sahara Coal Company and that he also serves as the Harrisburg Township Supervisor. Mr. Clayton said he “thought [he] filed” an IDOT Secondary Employment form for both positions.

iii. *Investigative Activity Following Danny Clayton's Interview*

On October 20, 2010, fifteen days after OEIG investigators asked Danny Clayton whether he had submitted a Secondary Employment form, OEIG investigators interviewed [REDACTED]. During this interview, [REDACTED] stated that Mr. Clayton submitted an IDOT Secondary Employment form in which Mr. Clayton listed his outside employment with Sahara Coal Company and Harrisburg Township on October 19, 2010.

**F. Failure to Cooperate with OEIG Investigators Allegation**

i. *First Interview of Danny Clayton*

[The allegations contained in this section were the subject of 11-EEC-012, released by the Commission on 11/29/12. The Commission is exercising its discretion to redact this section.]

ii. *Second Interview of Danny Clayton*

[The allegations contained in this section were the subject of 11-EEC-012, released by the Commission on 11/29/12. The Commission is exercising its discretion to redact this section.]

**G. Interference with the OEIG Investigation Allegation**

i. *Interview of [REDACTED] Regarding Interference with the OEIG Investigation*

[The allegations contained in this section were the subject of 11-EEC-012, released by the Commission on 11/29/12. The Commission is exercising its discretion to redact this section.]

ii. *Interview of Danny Clayton Regarding Interference with the OEIG Investigation*

[The allegations contained in this section were the subject of 11-EEC-012, released by the Commission on 11/29/12. The Commission is exercising its discretion to redact this section.]

**IV. OEIG Investigation Relating to David Phelps**

**A. Hiring Improprieties Allegation**

i. *Witness Interviews Regarding Hiring Improprieties*



OEIG investigators interviewed Department employees [REDACTED] and [REDACTED], both of whom are involved with District Nine hiring. During her interview, [REDACTED] said she conducted employment interviews for numerous IDOT positions. According to [REDACTED], Mr. Phelps always hinted toward whom he wanted for a position. [REDACTED] said Mr. Phelps made these requests orally. [REDACTED] informed OEIG investigators that many of the individuals hired for the 2009 Summer Program had a previous relationship with Mr. Phelps.

*ii. Interview of David Phelps Regarding Hiring Improprieties*

On November 8, 2010, OEIG investigators interviewed David Phelps. During the interview, Mr. Phelps said he vouches for candidates who apply for IDOT positions when he believes they should be hired. Mr. Phelps noted that he often writes letters of recommendation or personally informs interviewers of his feelings toward particular candidates. Mr. Phelps said he frequently did this for 2009 Summer Program candidates. Mr. Phelps also stated that he engages in this practice for all positions, including those that are *Rutan* protected. Mr. Phelps recollected that he recently contacted an interviewer to vouch for a candidate for a Highway Maintainer position,<sup>5</sup> but said the candidate was not hired. Mr. Phelps explained that he engages in this practice because he wants to help “good people” whom he knows. Investigators then asked if that included the “good people” who supported his previous Congressional campaign. In response, Mr. Phelps said “yes.”

*iii. Investigative Activity Following David Phelps’s Interview*

On November 17, 2010, OEIG investigators interviewed IDOT Secretary Gary Hannig. During the interview, Secretary Hannig said that for the *Rutan* protected positions, it would be improper for Mr. Phelps to involve himself in the interview process, contact interviewers, hold meetings with candidates, or recommend candidates. According to Secretary Hannig, these actions served no purpose other than to improperly interfere with otherwise objective hiring practices.

**B. Consultant Ranking Improprieties Allegation**

*i. Witness Interviews Regarding Consultant Rankings*

OEIG investigators interviewed IDOT engineer [REDACTED] and IDOT engineer [REDACTED] regarding Mr. Phelps’s involvement in the consultant ranking process. During their interviews, both individuals said Mr. Phelps requested firm ranking information on a number of

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<sup>5</sup> The OEIG secured and reviewed interview notes and selection criteria for a District Nine Highway Maintainer position. A review of these documents indicated this position is *Rutan* protected.

occasions. According to these witnesses, Mr. Phelps demanded that employees advance local firms' rankings if he was not satisfied with the firms' classification.

*ii. Interview of David Phelps Regarding Consultant Rankings*

During his November 8, 2010 OEIG interview, David Phelps said he meets with IDOT consultants, including Mark Workman of GeoTech, because he wants to "spread the wealth [in southern Illinois]." Mr. Phelps explained he assists southern Illinois businesses because he views his mission at the Department as to reverse the past discrimination against the people and entities of southern Illinois. To that end, Mr. Phelps said he instructs District Nine employees to favor local companies when "all things are equal."

**C. Employee Ethics Allegation**

*i. Interview of David Phelps Regarding the Employee Ethics Allegation*

During his November 8, 2010 OEIG interview, David Phelps said he serves at the will of the Governor and the bidding of the IDOT Secretary. Investigators asked Mr. Phelps what he does on a day-to-day basis. In response, Mr. Phelps could not provide any specifics other than that he meets with "lots of people." Investigators then asked Mr. Phelps to describe his duties as the Assistant Secretary. Mr. Phelps said he accepts invitations to meet with consultants and individuals who are applying for positions with the Department, because these individuals believe he can assist them by providing confidential IDOT information. Mr. Phelps said he always informs these people that he "cannot and will not do anything unethical."<sup>6</sup> Nonetheless, Mr. Phelps stated that, following these discussions, he always contacts the IDOT employees charged with rendering consultant rankings or hiring determinations for the purpose of examining whether the consultant or applicant had a legitimate complaint. Mr. Phelps said this practice is proper because he was merely looking out for "good people."

*ii. Investigative Activity Following David Phelps's Interview*

During his November 17, 2010 OEIG interview, Secretary Hannig said that Mr. Phelps believes that he (Mr. Phelps) controls IDOT Districts Eight and Nine. Investigators asked Secretary Hannig to describe Mr. Phelps's involvement with Department operations. In response, Secretary Hannig said that Mr. Phelps is not part of the IDOT management team [REDACTED].

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<sup>6</sup> To support his point, Mr. Phelps informed OEIG investigators that a vendor once offered him an envelope containing cash, which Mr. Phelps said he refused to accept.

## **V. OEIG Investigation Relating to Carrie Nelsen**

### **A. Gift Ban Allegation**

[The allegations contained in this section were the subject of 11-EEC-011, released by the Commission on 7/25/12. The Commission is exercising its discretion to redact this section.]<sup>7</sup>

#### *i. Review of Carrie Nelsen's Email Archive*

[The allegations contained in this section were the subject of 11-EEC-011, released by the Commission on 7/25/12. The Commission is exercising its discretion to redact this section.]

#### *iii. Witness Interviews Regarding the Gift Ban*

[The allegations contained in this section were the subject of 11-EEC-011, released by the Commission on 7/25/12. The Commission is exercising its discretion to redact this section.]

#### *iv. Interviews of Carrie Nelsen and Investigation Regarding the Gift Ban Allegation*

[The allegations contained in this section were the subject of 11-EEC-011, released by the Commission on 7/25/12. The Commission is exercising its discretion to redact this section.]<sup>8 9 10</sup>

### **B. [REDACTED]**

#### *i. Second Interview of Carrie Nelsen*<sup>11</sup>

[The allegations contained in this section were the subject of 11-EEC-011, released by the Commission on 7/25/12. The Commission is exercising its discretion to redact this section.]

#### *ii. Third Interview of Carrie Nelsen*

[The allegations contained in this section were the subject of 11-EEC-011, released by the Commission on 7/25/12. The Commission is exercising its discretion to redact this section.]

## **VI. OEIG Investigation Relating to Mary Lamie**

### **A. Gift Ban Allegation**

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<sup>7</sup> [Redacted]

<sup>8</sup> [Redacted]

<sup>9</sup> [Redacted]

<sup>10</sup> [Redacted]

<sup>11</sup> [Redacted].

*i. Interview of Mary Lamie Regarding the Gift Ban Allegation*

On November 9, 2010, OEIG investigators interviewed Mary Lamie. During the interview, Ms. Lamie said that she instructed [REDACTED] to solicit pizzas from a consultant for a District Nine party. Ms. Lamie noted that IDOT District Eight often hosts similar parties. According to Ms. Lamie, expenses for these events are limited to \$50, in order to comply with the Ethics Act. Ms. Lamie stated that she believed the entire District Nine pizza party cost less than \$50.

*ii. Interview of Carrie Nelsen Regarding the Gift Ban Allegation*

[The allegations contained in this section were the subject of 11-EEC-011, released by the Commission on 7/25/12. The Commission is exercising its discretion to redact this section.]

*iii. Review of Carrie Nelsen's Email Archive*

[The allegations contained in this section were the subject of 11-EEC-011, released by the Commission on 7/25/12. The Commission is exercising its discretion to redact this section.]

**B. [Redacted]**

[The Commission is exercising its discretion to redact this section pursuant to Section 20-52 of the Ethics Act.]

**VII. OEIG Investigation Relating to Mark Workman**

On November 9, 2010, OEIG investigators interviewed Mark Workman. During the interview, Mr. Workman said [REDACTED] requested that he provide her a number of gift cards, which he did. Mr. Workman recollected that [REDACTED] solicited gift cards from him worth approximately \$250 for the District Nine Christmas party in 2008 and in 2009. Mr. Workman noted that no individual gift card had a value greater than \$50. Mr. Workman also said that [REDACTED] solicited pizzas from GeoTech for the District Nine "Bring Your Kid to Work Day" for the prior three or four years. Mr. Workman said he did not recall the specific cost of the pizzas, but said they "probably [cost] \$150, definitely over \$100."

Regarding the baseball tickets, Mr. Workman initially said he could not recall if he provided [REDACTED] St. Louis Cardinals baseball tickets within the past year. OEIG investigators then presented Mr. Workman with copies of emails between himself and [REDACTED] relating to the baseball tickets. Upon reviewing the emails, Mr. Workman was able to

recall offering [REDACTED] tickets to the September 18, 2009 St. Louis Cardinals game, which she accepted. Mr. Workman said he often distributes baseball tickets “to be nice.” Mr. Workman stated that [REDACTED] may have offered to pay for the tickets, but that he likely told her “not to worry about it.”

## **VIII. Analysis**

### **A. Danny Clayton’s IDOT Policy and Ethics Act Violations**

#### *i. Danny Clayton Violated the IDOT Hiring Policies*

[The allegations contained in this section were the subject of 11-EEC-012, released by the Commission on 11/29/12. The Commission is exercising its discretion to redact this section.]

#### *ii. Danny Clayton Violated the IDOT Timekeeping Policies*

The OEIG investigation also reveals that Danny Clayton violated IDOT Personnel Policy 7-3 (2002), which states that all employees are required to be at their work stations from their appointed starting time until their appointed quitting time. This policy prohibits IDOT employees from abusing State time.

Danny Clayton habitually abused time by over-reporting the hours he allegedly worked. Between October 1, 2008 and July 31, 2009, Mr. Clayton reported on his timesheets that he spent 185.75 hours at the Illinois 34 Highway Project. Mr. Clayton’s representations are contradicted by the official records for the project. [REDACTED], advised that he noted in his daily diaries all site visits by IDOT employees, including Mr. Clayton. [REDACTED]’s diaries also included a detailed daily record of weather conditions at the work site, specific work progress, and visits from any IDOT management employees. According to [REDACTED]’s diaries, Mr. Clayton visited the work site twice during that time period: July 9 and 10, 2010. Mr. Clayton’s timesheets indicated that he only spent 1.5 hours at the Illinois 34 project on those two days. As a result, Mr. Clayton’s representations on his timesheets are directly contradicted by the project records kept by [REDACTED], who has responsibility for recording the daily activity on the project. There is no other documentation accounting for Mr. Clayton’s work for 184.25 hours, nearly 25 entire workdays or what would be the equivalent of \$10,470.31 in wages, for which he was paid. Moreover, [REDACTED], Mr. Clayton’s supervisor, is unable to account for his activities during this time period despite having otherwise attested. Therefore, the allegation that Mr. Clayton abused time is **FOUNDED**.

#### *iii. Danny Clayton Violated the IDOT Conflict of Interest Policy*

The OEIG investigation reveals that Danny Clayton violated IDOT Personnel Policy 15-1 (2002), which requires Department employees avoid situations giving rise to actual and apparent conflicts of interest. The purpose of this policy is to ensure that Department employees “maintain unusually high standards of honesty, integrity, impartiality, and conduct to ensure the proper performance of Department business.”

1. Conflict of Interest in Employment Postings

Danny Clayton’s practice of altering employment postings constituted a conflict of interest. Mr. Clayton reviews District Nine job postings for, among other positions, engineers. Mr. Clayton is required to execute this responsibility in an impartial manner.

In February 2010, Mr. Clayton altered a Civil Engineering Trainee posting by removing the requirement that the candidate hold a Civil Engineering degree. Numerous witnesses stated that Mr. Clayton did this to favor applicants with a construction background, and in particular his son, █████ Clayton. These witnesses said that Mr. Clayton stated that he did not want to receive emails regarding job postings, rather he preferred to discuss any issues face-to-face. The OEIG believes Mr. Clayton was attempting to conceal his misconduct. To be sure, OEIG investigators uncovered documentary evidence to support these allegations. As set out above, █████ emailed Mr. Clayton a draft job posting on February 2, 2010. █████ then responded to █████’s email with an attached copy of the posting that Mr. Clayton altered. Mr. Clayton acknowledged that he changed job postings to favor construction engineers and directed █████ to make similar changes to job postings. It was even known among staff that Mr. Clayton wanted his son to be employed by IDOT and that █████ Clayton wanted an IDOT job. Mr. Clayton said he did not alter any posting to help his son secure a Department position. Although IDOT never hired █████ Clayton, Mr. Clayton’s efforts to tailor a position posting in a manner that closely resembles his son’s qualifications, coupled with his conversations pertaining to his son’s desire to work for the Department, reveals that Mr. Clayton engaged in a conflict of interest when examining Civil Engineer postings, and thus, this allegation is FOUNDED.<sup>12</sup>

2. Conflict of Interest in Consultant Rankings

Danny Clayton violated the IDOT conflict of interest policy by directing District Nine employees to select consultants from southern Illinois at the expense of otherwise qualified companies from other parts of the state. During his October 5, 2010 OEIG interview, Mr. Clayton admitted that he tried to favor local companies. To that end, Mr. Clayton advised that he

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<sup>12</sup> The OEIG is concerned that this practice could have resulted in District Nine potentially hiring unqualified candidates if in fact a civil engineer was required for the position and a civil engineer was not engaged.

often questioned why local firms were ranked lower than those from other areas. The OEIG examination of various consultant ranking files revealed a practice of favoring certain companies, namely southern Illinois firms, by improving their rankings beyond the assigned engineer's initial determination. Mr. Clayton stated that this practice was permissible, because local firms have lower travel expenses than those from other areas of the state and favoring such organizations saved the Department money. However, consultant location was already a part of the initial ranking calculation made by individuals like [REDACTED] and [REDACTED]. In fact, the IDOT Design and Environment Manual, Section 8-2.04(c) states that a firm's location is one of many factors considered during the initial consultant ranking. Therefore, by these actions Mr. Clayton caused or may have caused firms from southern Illinois to receive IDOT contracts rather than potentially better qualified companies from other areas of the state. In doing so, Mr. Clayton may have compromised the quality of services provided to and paid for by Illinois taxpayers. This allegation is FOUNDED.

*iv. Danny Clayton Violated the IDOT Secondary Employment Policy*

The OEIG investigation also reveals that Danny Clayton violated IDOT Personnel Policy 15-4 (2010), which prohibits employees from holding outside employment without filing a Secondary Employment form with his or her supervisor.

Danny Clayton has been an Advisor for Sahara Coal Company and the Harrisburg Township Supervisor for the duration of his State service. Mr. Clayton did not file a disclosure form with the Department until October 19, 2010—two weeks after the OEIG questioned him regarding his failure to file. Therefore, Mr. Clayton's failure to document his outside work until after his OEIG interview violated Department policy. This allegation is FOUNDED.

*v. Danny Clayton Violated the Ethics Act Non-Cooperation Provisions*

[The allegations contained in this section were the subject of 11-EEC-012, released by the Commission on 11/29/12. The Commission is exercising its discretion to redact this section.]

*vi. Danny Clayton Interfered with the OEIG Investigation*

[The allegations contained in this section were the subject of 11-EEC-012, released by the Commission on 11/29/12. The Commission is exercising its discretion to redact this section.]

**B. David Phelps's IDOT Policy Violations**

*i. David Phelps Violated the IDOT Hiring Policies*

1. 2009 Summer Program

The OEIG investigation reveals that David Phelps violated multiple IDOT hiring policies. Mr. Phelps's involvement in the 2009 Summer Hiring violated the IDOT Personnel Policies 1-1(B)(1) (2002) and 3-8 (2002), which require employment selections be made on the basis of qualification to fulfill job responsibilities and duties.

Mr. Phelps, a high-ranking IDOT official, admitted he vouched for specific candidates for 2009 Summer Program positions. In addition, [REDACTED] informed investigators that Mr. Phelps often provided IDOT interviewers the names of candidates Mr. Phelps wanted to aid. [REDACTED] also noted that Mr. Phelps never provided documentation to reflect these requests. The avoidance of a paper trail reflects that Mr. Phelps intended to conceal his misconduct. In addition, [REDACTED] stated that many of the candidates subsequently hired had a relationship with Mr. Phelps. The only reason to endorse an applicant is to bolster their chances of obtaining employment. As a result, Mr. Phelps used his position to enable a select set of candidates to obtain a position based on his recommendation, rather than qualification. Therefore, the allegation that David Phelps impermissibly interfered with the 2009 Summer Program in violation of IDOT hiring policy is FOUNDED.<sup>13</sup>

2. Interference With the Interview Process

In accordance with the United States Supreme Court decision *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), Administrative Order No. 2 (1990) requires all State agencies to select job candidates based on objective criteria for positions other than those defined as policy making or confidential posts. In addition, the State of Illinois Interview and Selection Criteria and Techniques, Chapter 1(C)(4)(b), states that interviewers for these positions must maintain consistency and objectivity throughout the interview process. Chapter 4(A)(7) advises the interviewer to avoid placing bias on a first impression. It follows that a State employee should not take steps to interfere with an interviewer's objectivity at any time.

In this case, David Phelps repeatedly violated Administrative Order No. 2. Mr. Phelps explained that he hosted meetings with candidates regarding their applications with the Department and then met with individual interviewers to vouch for certain candidates. Mr. Phelps recalled that he did this even if the position was subject to Administrative Order No. 2. Mr. Phelps's discussions served no purpose other than to alter the interviewer's objectivity with respect to the applicant. Mr. Phelps repeatedly admitted as much when he repeatedly said he wanted to help "good people." IDOT Secretary Gary Hannig advised OEIG investigators that such behavior has no basis other than to improperly influence an interview.

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<sup>13</sup> The OEIG is also concerned that these hiring practices may have come at the expense of more qualified candidates, in potentially altering the quality of IDOT's services and in a lowered morale of IDOT employees who observed favoritism.



In order to preserve objectivity, Administrative Order No. 2 (2009) provides that interviewers for *Rutan* protected positions are to be insulated from “advance knowledge of candidates and of outside influences.” Accordingly, interviewers are not even permitted to review a candidate’s resume before interviewing the applicant. Mr. Phelps’s conduct violated Administrative Order No. 2 because he intentionally injected his own bias into the interview process. Therefore, Mr. Phelps’s conduct violated the State’s established interview protocol and this allegation is FOUNDED.

ii. *David Phelps Violated the IDOT Conflict of Interest Policy*

The OEIG investigation reveals that David Phelps violated IDOT Personnel Policy 15-1 (2002), which requires Department employees to avoid situations giving rise to actual and apparent conflicts of interest.

David Phelps violated the IDOT conflict of interest policy by directing District Nine employees to select consultants from southern Illinois at the expense of otherwise qualified companies from other parts of the State. During his OEIG interview, Mr. Phelps admitted he encouraged staff to select southern Illinois organizations that were similarly ranked to any other companies. The OEIG confirmed that District Nine employed a practice of favoring certain companies, namely southern Illinois firms, by improving their rankings beyond the assigned engineer’s initial determination. However, as noted above, consultant location was already a part of the initial ranking calculation. In a manner identical to Mr. Clayton, Mr. Phelps caused or may have caused firms from southern Illinois to receive IDOT contracts rather than potentially better qualified companies from other areas of the state. Thus, the allegation that Mr. Phelps violated the IDOT conflict of interest policy is FOUNDED.

iii. *David Phelps Violated the IDOT Employee Ethics Policy*

The OEIG investigation reveals that David Phelps violated IDOT Personnel Policy 11-3(H) (2002), requiring employees to maintain the highest possible ethical standards and furthermore, IDOT Personnel Policy 11-3(C) (2002), requiring employees to promote a positive public image of the Department.

Mr. Phelps engaged in practices that call into question the ethics of IDOT and consequently promoted a negative perception of himself and the Department. Mr. Phelps admitted he met with private citizens and consultants to discuss ongoing hiring and business transactions in an effort to help them. Mr. Phelps characterized the individuals with whom he met as “good people” he knew in southern Illinois. Mr. Phelps admitted the purpose of the meetings, from the other party’s perspective, was to allow the candidate or consultant to elicit

confidential information from him. Mr. Phelps denied that he disclosed confidential information to these individuals and said he would not do anything unethical, yet he admitted that he frequently consulted the individuals charged with reviewing applications to influence their action. Given Mr. Phelps's noted desire to aid individuals whom he knew to be "good people," it follows that the purpose of these meetings was to provide a professional advantage to his acquaintances. By meeting with and advocating for people he knows, Mr. Phelps undermines the public perception that IDOT conducts itself in an even-handed manner. As a result, his conduct does not promote a positive image of the Department and therefore, violated IDOT policy.

Assertions Mr. Phelps made during his interview with respect to his execution of his IDOT duties and responsibilities warrant additional discussion. During his OEIG interview, Mr. Phelps could not provide any specifics regarding Department work he performed other than that he meets with "lots of people." In fact, the only activities related to IDOT that Mr. Phelps could detail were his improper meetings and interfering in hiring and consultant ranking practices. Similarly, Secretary Hannig said that Mr. Phelps believes he (Mr. Phelps) has full control over IDOT Districts Eight and Nine (which are located in Southern Illinois). In addition, Secretary Hannig advised that Mr. Phelps is not part of the IDOT management team and does not actively participate in IDOT meetings. In light of Mr. Phelps's inability to detail his role with the Department, it appears that Mr. Phelps does little work. This, coupled with the OEIG investigative findings, seemingly indicates that the primary actions which Mr. Phelps undertakes in an official capacity are those that constitute misconduct and abuse of his position. Mr. Phelps's behavior with respect to the IDOT Employee Ethics policy perpetuates negative stereotypes relating to Illinois State Government officials and promotes a negative public image of the Department, which violates IDOT policy. These allegations are FOUNDED.

### **C. Carrie Nelsen's Ethics Act Violations**

#### *i. Carrie Nelsen Violation of the Ethics Act Gift Ban Provisions*

[The allegations contained in this section were the subject of 11-EEC-012, released by the Commission on 11/29/12. The Commission is exercising its discretion to redact this section.]<sup>14</sup>

<sup>15</sup> <sup>16</sup>

### **D. Mary Lamie's [REDACTED] Ethics Act Violation**

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<sup>14</sup> [Redacted]

<sup>15</sup> [Redacted]

<sup>16</sup> [Redacted]

*i. Mary Lamie Violated the Ethics Act Gift Ban Provisions*

Mary Lamie violated the Gift Ban provisions of the Ethics Act by directing [REDACTED] to solicit pizzas from a consultant. Section 5 ILCS 430/10-10 of the Ethics Act provides that “[e]xcept as otherwise provided in this Article, no officer, member, or state employee shall intentionally solicit or accept any gift from any prohibited source[.]”

The OEIG investigation revealed that on April 21, 2009, [REDACTED] intentionally solicited and then accepted pizzas from Mark Workman at the request of Ms. Lamie. During her November 9, 2010 OEIG interview, Ms. Lamie admitted directing [REDACTED] to solicit pizzas from a consultant for the District Nine party. As set forth above, the pizzas constituted a violative gift from a prohibited source. In effect, Ms. Lamie used a subordinate employee as a vehicle to violate the Ethics Act. The Ethics Act does not permit this manner of conduct. Therefore, the allegation that Ms. Lamie violated the Gift Ban provisions of the Ethics Act is **FOUNDED**.

*ii. [Redacted]*

[The Commission is exercising its discretion to redact this section pursuant to Section 20-52.]

**E. Mark Workman Violated the Ethics Act Gift Ban Provisions**

The OEIG investigation reveals that Mark Workman violated the Gift Ban provisions of the Ethics Act. Section 5 ILCS 430/10-10 of the Ethics Act states that “[n]o prohibited source shall intentionally offer or make a gift that violates this Section.”

Mark Workman violated the Gift Ban provisions of the Ethics Act by providing [REDACTED] [REDACTED] baseball tickets, gift cards, and pizzas. As set forth above, these items are prohibited gifts, as defined by the Ethics Act, and Mr. Workman is a prohibited source. Accordingly, Mr. Workman’s conduct with respect to these gifts violated the Ethics Act. Thus, the allegation is **FOUNDED**.

**IX. Recommendations**

The OEIG issues these findings:

- **FOUNDED** – [REDACTED] and David Phelps engaged in hiring improprieties.
- **FOUNDED** – Danny Clayton abused time.

- **FOUNDED** – Danny Clayton altered IDOT employment postings in a manner that constituted a conflict of interest.
- **FOUNDED** – Danny Clayton and David Phelps altered IDOT consultant rankings in a manner that constituted a conflict of interest.
- **FOUNDED** – Danny Clayton failed to document two secondary jobs.
- **FOUNDED** – David Phelps engaged in meeting practices with private citizens that violated the IDOT Employee Ethics Policy.
- **FOUNDED** – Carrie Nelsen, Mary Lamie, and Mark Workman engaged in conduct that violated the Ethics Act Gift Ban provisions.
- **FOUNDED** – [The Commission is exercising its discretion to redact this section pursuant to Section 20-52 of the Ethics Act.].
- **FOUNDED** – [The allegations contained in this section were the subject of 11-EEC-011, released by the Commission on July 25, 2012, and 11-EEC-012, released by the Commission on 11/29/12. The Commission is exercising its discretion to redact this section.].
- **FOUNDED** – [The allegations contained in this section were the subject of 11-EEC-012, released by the Commission on 11/29/12. The Commission is exercising its discretion to redact this section.].

The OEIG issues these recommendations:

### **Danny Clayton**

The OEIG recommends that Danny Clayton be discharged with no right to reinstatement with any State agency for (1) [REDACTED]; (2) abusing time; (3) altering employment postings in a manner that constituted a conflict of interest; (4) engaging in consultant ranking practices that constituted a conflict of interest; (5) failing to document his secondary employment; (6) [REDACTED]; and (7) [REDACTED]. Any separation agreement reached with Mr. Clayton should state that he agrees to never apply for or obtain State employment in the future.

[REDACTED]  
[REDACTED]  
[REDACTED] As noted above, there is no documentation accounting for Mr. Clayton's work for 184.25 hours, nearly 25 workdays or what would be the equivalent of \$10,470.31 in wages, for which he was paid. The OEIG also recommends that the Department consider seeking restitution from Mr. Clayton in the amount of \$10,470.31 or some lesser amount, in light of the fact that it is unknown what if any work he performed during the 184.25 hours of unverifiable time he claimed to have been at the Illinois 34 site.

**David Phelps**

The OEIG recommends that David Phelps be discharged with no right to reinstatement with any State agency for engaging in (1) hiring improprieties; (2) consultant ranking practices that constituted a conflict of interest; and (3) meeting practices that violated the Department Ethics Policy. Any separation agreement reached with Mr. Phelps should state that he agrees to never apply for or obtain State employment in the future.<sup>17</sup>

**Carrie Nelsen**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Mary Lamie**

The OEIG recommends that Mary Lamie be subject to discipline for violating the Gift Ban provisions of the Ethics Act [The Commission is exercising its discretion to redact this clause pursuant to Section 20-52 of the Ethics Act.].

**Mark Workman**

The OEIG recommends that the Illinois Department of Transportation counsel Mark Workman that the State Officials and Employees Ethics Act bars individuals that conduct

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<sup>17</sup> David Phelps is an executive officer and therefore only the Governor's Office may remove him. Ill. Const. Art. 5 § 10; 20 ILCS 5/5-100; 20 ILCS 5/5-185. The OEIG believes that Mr. Phelps's conduct amounts to the neglect of duty and malfeasance for which he may be removed pursuant to Ill. Const. Art. 5.

[REDACTED]  
[REDACTED]  
[REDACTED] As noted above, there is no documentation accounting for Mr. Clayton's work for 184.25 hours, nearly 25 workdays or what would be the equivalent of \$10,470.31 in wages, for which he was paid. The OEIG also recommends that the Department consider seeking restitution from Mr. Clayton in the amount of \$10,470.31 or some lesser amount, in light of the fact that it is unknown what if any work he performed during the 184.25 hours of unverifiable time he claimed to have been at the Illinois 34 site.

### **David Phelps**

The OEIG recommends that David Phelps be discharged with no right to reinstatement with any State agency for engaging in (1) hiring improprieties; (2) consultant ranking practices that constituted a conflict of interest; and (3) meeting practices that violated the Department Ethics Policy. Any separation agreement reached with Mr. Phelps should state that he agrees to never apply for or obtain State employment in the future.<sup>17</sup>

### **Carrie Nelsen**

The OEIG recommends that Carrie Nelsen be subject to discipline for violating the Gift Ban provisions of the Ethics Act [REDACTED]  
[REDACTED]. In addition, the OEIG will request that the Illinois Attorney General file a complaint against Ms. Nelsen with the Illinois Executive Ethics Commission alleging that she violated Article 10 of the State Officials and Employees Ethics Act [REDACTED]  
[REDACTED].

### **Mary Lamie**

The OEIG recommends that Mary Lamie be subject to discipline for violating the Gift Ban provisions of the Ethics Act [The Commission is exercising its discretion to redact this clause pursuant to Section 20-52 of the Ethics Act.].

### **Mark Workman**

The OEIG recommends that the Illinois Department of Transportation counsel Mark Workman that the State Officials and Employees Ethics Act bars individuals that conduct

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<sup>17</sup> David Phelps is an executive officer and therefore only the Governor's Office may remove him. Ill. Const. Art. 5 § 10; 20 ILCS 5/5-100; 20 ILCS 5/5-185. The OEIG believes that Mr. Phelps's conduct amounts to the neglect of duty and malfeasance for which he may be removed pursuant to Ill. Const. Art. 5.

business or seek to conduct business with the State from offering certain gifts to State employees.

### **IDOT Policies**

The OEIG also recommends that the Illinois Department of Transportation take action to remedy apparent Departmental shortcomings disclosed during the course of the investigation. Recommended measures include:

- The implementation of a policy or policies requiring employees to timely inform their supervisors of their location in instances where the supervisor is stationed at an office other than that of their subordinate.
- Assure that senior management is apprised that they are not to inappropriately disclose to private citizens information regarding employment interview practices.
- Amend the Design and Environment Manual to prohibit any alterations to consultant and vendor rankings that are inconsistent with merit-based decision making.
- Address the apparently serial institutional violations of the State Officials and Employees Ethics Act Gift Ban provisions.

No further investigative action is needed and this case is considered closed.



# Illinois Department of Transportation

Office of Quality Compliance & Review  
201 West Center Court / Schaumburg, Illinois 60196-1096

January 31, 2011

Mr. Neil Olson  
Deputy Director  
Office of Executive Inspector General  
607 East Adams, 14<sup>th</sup> Floor  
Springfield, Illinois 62701-1634

Subject: OEIG Complaint # 09-00715

Dear Mr. Olson:

This letter is in response to your January 12, 2011 letter regarding case number 09-00715 in which you requested that we inform your office of the actions taken by the Illinois Department of Transportation (IDOT) to address your recommendations. The following actions have been taken or are planned:

- 1) Danny Clayton – The Department concurs:
  - a. Mr. Clayton was discharged effective January 24, 2011.
  - b. A "First and Final Demand for Payment" letter was given to Mr. Clayton on January 24, 2011 for the amount of \$10,470.31. Mr. Clayton has 15 calendar days from the date of the discharge letter to reimburse the state, enter into an installment agreement, or request a face-to-face conciliation conference.
  - c. Per Departmental policy, previously discharged employees are not eligible to be rehired.
  - d. The Department is unable to adequately address the issue of banning future statewide employment. We believe that neither IDOT nor the Governor's Office has the authority to ban an individual from seeking state employment in the future, particularly with respect to Rutan-covered jobs which are competitively bid. It is also unlikely that Mr. Clayton would agree to this provision and should he so agree, there is a significant legal question as to whether this agreement would be legally enforceable given the parameters of the United States Supreme Court case of Rutan. Therefore, we would respectfully request to be relieved of this requirement or in the alternative, to discuss the appropriate action to follow within the parameters of the law and your guidance.



2) David Phelps – The Department concurs:

(Reminder: As stated in your report, Mr. Phelps is an executive officer and therefore only the Governor's Office may remove him.)

It is the Department's understanding that Mr. Phelps has resigned effective February 11, 2011.

3) Carrie Nelsen – The Department concurs:

A 2 week suspension notice will be delivered to Ms. Nelsen the week of January 31, 2011.

4) Mary Lamie – The Department concurs:

A meeting has been scheduled with Ms. Lamie for February 2, 2011. She will be counseled regarding [redacted] and the requirements of the Gift Ban provisions of the Ethics Act.

5) Mark A. Workman (Non-Employee) – The Department concurs:

A letter is being prepared to be sent to Mr. Workman by February 4, 2011 to remind him of the requirements of the Gift Ban provisions of the Ethics Act. A copy of the letter will be forwarded to the OEIG.

6) IDOT Policies – The Department concurs:

The Department concurs with the recommendations:

"Recommended measures include:

- The implementation of a policy or policies requiring employees to timely inform their supervisors of their location in instances where the supervisor is stationed at an office other than that of their subordinate.
- Assure that senior management is apprised that they are not to inappropriately disclose to private citizens information regarding employment interview practices.
- Amend the Design and Environment Manual to prohibit any alteration to consultant and vendor rankings that are inconsistent with merit-based decision making.
- Address the apparently serial institutional violations of the State Officials and Employees Ethics Act Gift Ban provisions."

The Department is in the process of addressing the concerns. Documentation of actions taken by the Department will be forwarded to the OEIG. Implementation is expected by March 1, 2011.

Mr. Neil Olson  
January 31, 2011  
Page 3

If you have any questions, or if I can be of further assistance to you or your staff, please do not hesitate to contact me at 847-221-3086.

Respectfully,

Daniel J. Kennelly  
Director  
Office of Quality Compliance & Review

cc: Secretary Gary Hannig  
Chief of Operations Ann Schneider  
Chief Counsel Ellen Schanzle-Haskins  
Ethics Officer Robert Anderson

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

IN RE: David Phelps

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09-00715

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked the Commission will not make your response public if the redacted report is made public.

☒ Below is my public response. Please make this response public if the summary report is also made public; or

☐ Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

\_\_\_\_\_  
Respondent's Signature

1-18-13  
Date

Robert A. Uhe

Attorney for David Phelps

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission  
401 S. Spring Street, Room 513 Wm. Stratton Building  
Springfield, IL 62706

Please see attached.

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**TAYLORUHE** <sup>LLC</sup>

312 SOUTH FOURTH STREET | SUITE 200 | SPRINGFIELD, ILLINOIS 62701

Robert A. Uhe  
312.206.2884  
[ruhe@tayloruhe.com](mailto:ruhe@tayloruhe.com)

January 18, 2013

Hon. Members of the Executive Ethics Commission  
Chad Fornoff, Executive Director  
401 S. Spring Street  
513 Stratton Building  
Springfield, Illinois 62706

**In Re: David Phelps et al., OEIG Case No. 09-00715**

**REQUEST FOR NON-PUBLICATION OR REDACTION OF FINAL REPORT**

Dear Honorable Commissioners and Executive Director Fornoff:

I write on behalf of my client, Mr. David Phelps, in response to Executive Director Chad Fornoff's letter dated December 27, 2012 in the above-reference matter. Accompanying Mr. Fornoff's letter was a partially redacted draft Final Report from the Office of the Executive Inspector General ("OEIG"), and a Response letter from the Illinois Department of Transportation ("IDOT") dated January 31, 2011. Mr. Fornoff's letter indicates that Mr. Phelps now may provide the Commission with any additional suggestions for redaction. We are pleased to have that opportunity and submit the following for your consideration.

**Overview and Procedural Posture**

Mr. Phelps has dedicated his life to public service, and in particular, to the betterment of Southern Illinois. He has held local office (Saline County Clerk and Recorder from 1980-85), state office (State Representative from the 118<sup>th</sup> District from 1985-1999), and federal office (U.S. Congressman from the 19<sup>th</sup> Congressional District from 1999-2003). Most recently, Mr. Phelps was elected in 2012 to a part-time position as a member of the Saline County Board.

Mr. Phelps' career-long efforts to improve the condition of Southern Illinois led to his appointment as the Assistant Secretary of the Illinois Department of Transportation, where he served for eight years prior to resigning and retiring from state government on February 11, 2011. In that position, an executive office appointed by the Governor pursuant to the Illinois Constitution, Mr. Phelps was subject to removal only by the Governor. Mr. Phelps was not removed from his position, and no disciplinary action was ever taken against him either by IDOT or by the Governor.

Having resigned voluntarily and of his own free will, Mr. Phelps is no longer employed by IDOT or the State of Illinois, and is now enjoying retirement from his many years of full-time public service.

In the draft Final Report, the OEIG claimed that Mr. Phelps “violated” certain administrative and internal IDOT policies relating to employee conduct. The OEIG did not allege that Mr. Phelps violated the State Officials and Employees Ethics Act in any way. And there is no allegation that Mr. Phelps sought any personal or financial benefit from any of the conduct alleged.

During the course of the investigation Mr. Phelps cooperated fully with investigators from the OEIG’s office and agreed to be interviewed voluntarily and without legal counsel. The investigation resulted in no formal complaints being filed by the OEIG against Mr. Phelps, and therefore there has been no evidentiary hearing on the allegations described in the Final Report against Mr. Phelps. Accordingly Mr. Phelps has not had the opportunity to challenge or rebut the allegations that were made against him by anonymous employees and the OEIG.

The investigation in this case is indicated to be “closed”, and it is our understanding that no additional actions are contemplated to be taken by the OEIG with respect to Mr. Phelps. The only question now is what portions of the draft Final Report, and IDOT’s Response, should be redacted prior to being made public (if at all) pursuant to 5 ILCS 430/20-52.

In short, we urge the Commission to find that public release of the Final Report and agency Response in their current form is not required under 5 ILCS 430/20-52, and that either (1) the Final Report and agency Response should be redacted in their entirety (or not published at all), or (2) all allegations and discussion of allegations in both documents regarding Mr. Phelps should be redacted in their entirety.

**I. Release of the Final Report and Response is Not Required Under Section 20-52**

Release of an OEIG final report and agency response is only *required* under Section 20-52 of the State Officials and Employees Ethics Act where the Commission has received a summary report and agency response “that resulted in” a three-day (or longer) suspension, or in a discharge of the employee:

Within 60 days after receipt of a summary report and response from the ultimate jurisdictional authority or agency head that resulted in a suspension of at least 3 days or termination of employment, the Executive Ethics Commission shall make available to the public the report and response or a redacted version of the report and response. 5 ILCS 430/20-52(a) (emphasis added).

In construing this provision, we submit that the trigger for any *required* public release of the report only occurs where the suspension or termination results from affirmative disciplinary actions taken by the employer against the employee. A plain reading of Section 20-52 provision compels this conclusion.

First, a suspension clearly requires action on the part of the employer against the employee.

Second, the use of "termination" in this context, when coupled with the requirement that it must have "resulted" from the summary report and agency response, can only mean that the employing agency must have itself taken action to discharge the employee, or terminate the employment relationship. If the employment relationship ends for any other reason, such as a resignation or retirement, any assumption that it was the "result" of the summary report or the agency response would be unsupported, pure speculation.

Third, in order to rise to the level of a required publication under Section 20-52, it is not sufficient for the employing agency to merely indicate "concurrence" in its response, without taking a disciplinary action that rises to the level of suspension or discharge. Section 20-52 clearly requires the agency to take certain disciplinary action that the legislature considered sufficient to meet this standard. It does not say that publication is required merely because the agency may "concur" in some or all allegations contained in a summary report.

Not only is this interpretation compelled by the plain wording of the statute, but it best reflects the public policy rationale for the potential public release of any allegations that have not been tested in an adversarial hearing (where the accused could have the opportunity to rebut the allegations and cross-examine his or her accusers). On balance, the legislature decided that where the responding agency has in fact meted out such discipline (3-day suspension or termination), that action is significant enough to raise the possibility of publication. Correspondingly, where an agency does not take either of the two substantial disciplinary actions, then the threshold requirement for public release of the final report and response has not been met.

#### **A. Allegations Involving Mr. Phelps**

In the case of Mr. Phelps, although the summary report recommended discharge, the record reflects that IDOT did not "terminate" Mr. Phelps, or take any other disciplinary action against him. Likewise, the Governor did not remove, attempt to remove, or take any action with respect to Mr. Phelps' appointment as Assistant Secretary of IDOT. The record only reflects that at the time of IDOT's response to the OEIG summary report, Mr. Phelps had submitted his resignation, effective Feb. 11, 2011.

Under the circumstances presented in this case, the Commission should reject any invitation to speculate on a causal connection between a resignation and a summary report or investigation. An individual may decide to resign (and in this case retire from state government) for any number of reasons, and there is no basis in the record to conclude that Mr. Phelps' resignation (and retirement) should equate to a "termination" for purposes of 5 ILCS 430/20-52. Therefore it would be inappropriate to base the release of allegations against Mr. Phelps on the fact that he resigned his position.

Because Mr. Phelps was not disciplined or terminated by his employer nor removed by the Governor, but rather resigned voluntarily, the threshold for a mandated public release has not been met in this case.

#### **B. Allegations Involving Other Individuals**

In its current, partially redacted form, the Final Report also contains allegations against two other individuals – Mary Lamie, and Mark Workman. The actions taken by IDOT as a result of the summary report against Ms. Lamie and Mr. Workman did not involve any suspensions or termination of employment (Mr. Workman was an IDOT vendor, not an employee).

In addition, two other individuals, Mr. Danny Clayton and Ms. Carrie Nelsen, were apparently also subjects of the original summary report to IDOT. Subsequent to disciplinary action taken against them by IDOT, which did involve discharge in the case of Mr. Clayton and a two-week suspension in the case of Ms. Nelsen, complaints against those two individuals were filed with the Commission by the OEIG. After contested evidentiary hearings in each case, the Commission found violations of the State Officials and Employees Ethics Act by both Mr. Clayton and Ms. Nelsen on different grounds, and those decisions of the Commission have since been made publicly available.

Despite those subsequent proceedings concerning Mr. Clayton and Ms. Nelsen, all allegations pertaining to them have been redacted from the proposed Final Report received by Mr. Phelps. The accompanying Response from IDOT does not contain any redactions.

With the redactions of allegations against Mr. Clayton and Ms. Nelsen, none of the three other subjects of the original summary report received any substantial disciplinary action in the form of suspension or discharge. As a result, there is no requirement for the public release of the Final Report under 5 ILCS 430/20-52, in its current partially redacted form.

Regardless, even if the allegations against Mr. Clayton and Ms. Nelsen were being considered for publication, in a case such as this where a summary report involves more than one individual subject, the question of publication should be made independently with respect to each individual identified in the report. To proceed

otherwise would be counter-intuitive and inconsistent with Section 20-52. It would be unfair to Mr. Phelps, and contrary to the clear design of Section 20-52, to publish allegations made against him simply because others, who received discipline and were found *by the Commission* to have violated the State Officials and Employees Ethics Act, were investigated at the same time and included in the same summary report.

(Note: If the Commission were to consider publication of the redacted portions of the draft Final Report relating to Mr. Clayton and Ms. Nelsen, we would request the opportunity to review those provisions prior to any publication to ensure that none of those allegations discuss or involve Mr. Phelps.)

For all of these reasons, the Commission should conclude that at a minimum, the allegations against Mr. Phelps are not *required* to be published pursuant to Section 20-52 of the State Officials and Employees Ethics Act, and as presented in its current partially redacted form, the same is true of the draft Final Report in its entirety.

## **II. The Balance of Interests Compels Redaction of Allegations Relating to Mr. Phelps**

Even if Section 20-52 is determined to require publication of at least some portions of the Final Report and agency Response (for instance, those allegations involving Mr. Clayton and Ms. Nelsen, due to the disciplinary actions taken against them), or if the Commission contemplates exercising its discretionary authority to make the Final Report and agency Response public in some other form, the Commission has broad discretion and flexibility to “redact any information it believes should not be made public.” 5 ILCS 430/20-52(b).

In its introductory paragraphs to the Final Report, the Commission appropriately acknowledges its authority and responsibility in this respect, noting that redactions may be made as part of a balancing between the “sometimes-competing” public interests of transparency, and fairness to the accused. The Commission further acknowledges that “[some] subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.”

This is certainly true with respect to Mr. Phelps. In this case, Mr. Phelps has not had the opportunity to rebut any of the allegations made in the report, nor could he confront any witnesses making those allegations because their identities have been concealed. Mr. Phelps does not have access to documents relating to him in the investigation file. Mr. Phelps is now faced with the prospect that anonymous and conclusory allegations against him may be made public, potentially destroying his personal and public reputation established over 30 years as a public servant to the people of Illinois.

Because this is not an evidentiary hearing, we will not attempt to rebut or counter every allegation or opinion offered against Mr. Phelps, or the characterizations of



those allegations and opinions suggested by the OEIG. But while Mr. Phelps' liberty may not be at stake, his reputation certainly is. This compels us to address the conclusory descriptions of many of the so-called "founded" allegations and "violations" contained in the OEIG's summary report, in light of the authority provided for OEIG investigations and reports in Section 20-50 of the State Officials and Employees Ethics Act.

Nowhere in the statute is the OEIG empowered to make any final or binding determinations that a "violation has occurred" upon the conclusion of an investigation. Instead, the statute directs the OEIG to determine whether "*reasonable cause to believe* that a violation has occurred." 5 ILCS 430/20-50(a) (emphasis added).

Where such "reasonable cause" is found to exist, the OEIG is directed to issue a summary report to the appropriate "ultimate jurisdictional authority" and to the head of the relevant state agency that employs the subject. And in such summary reports, the OEIG is directed by law to describe "allegations" and "alleged misconduct discovered in the course of the investigation." *Id.* at 20-50(b). Similarly, the Commission's own administrative rules closely follow the wording of the statute, speaking in terms of finding "reasonable cause" to believe that a violation has occurred, *see* 2 Ill. Admin. Code 1620.1000, or that an allegation is "founded". *See id.* at 1620.1020.

In contrast, the OEIG report at issue in this case contains numerous examples of statements by the OEIG that go beyond determining whether "reasonable cause" exists. Instead, the OEIG purports to assert specific violations of certain IDOT policies as having been made in fact, without any qualification. But none of these allegations were "proved" in any way, nor were they required to be under the structure and process established by the legislature.

In any investigation that involves perceptions and viewpoints of different people who may have their own personal biases and opinions, reasonable people may disagree on what the "facts" are, and how those facts may properly relate to guiding principles of policy or law. This, of course, is why an adversarial system with due process is such a bedrock constitutional principle.

The OEIG is not a trier of fact, and no violations of any policy or law have been established against him in a due process proceeding. But by making these "findings" without appropriate qualifying language, the OEIG's summary report casts Mr. Phelps as someone who has in fact committed violations of IDOT policies. This is patently unfair to Mr. Phelps. When anonymous allegations are given a cloak of "legitimacy" upon publication by a governmental ethics body and presented not just as allegations, but as findings of fact and law, the damage to a person's reputation can be significant, and may be irreversible.

For all of these reasons, it would be unfair, prejudicial, and unjustifiably harmful to the reputation of Mr. Phelps to publish any of the allegations made against him. Therefore even if some portions of the Final Report and IDOT's Response are to be published, the Commission should redact all allegations and discussion of allegations against Mr. Phelps prior to publication.

**Conclusion and Request for Non-Publication or Redaction**

The unfairness to Mr. Phelps that would result from a publication of any of the allegations against him weighs in favor of complete redaction of all of those allegations in the Final Report.

Therefore, we respectfully request that (1) no publication of the draft Final Report and agency Response be made in any form, or alternatively, (2) if the Commission determines that publication of some portions of the draft Final Report and agency Response is warranted, then any and all allegations and discussion of allegations involving Mr. Phelps should be redacted in their entirety prior to publication.

Very truly yours,

Robert A. Uhe

Date: January 18, 2013

**ATTORNEY FOR DAVID PHELPS**

Robert A. Uhe  
TAYLOR UHE LLC  
312 S. Fourth Street  
Suite 200  
Springfield, IL 62701  
Tel.: (c) 312.206.2884  
Email: [ruhe@tayloruhe.com](mailto:ruhe@tayloruhe.com)

IL Attorney # 6216973

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IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

EXECUTIVE  
ETHICS COMMISSION

IN RE: Danny Clayton )


09-00715

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked the Commission will not make your response public if the redacted report is made public.

X Below is my public response. Please make this response public if the summary report is also made public; or

X Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

Respondent's Signature 

3-11-2013  
Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission  
401 S. Spring Street, Room 513 Wm. Stratton Building  
Springfield, IL 62706

2. Response.

If the OEIG Final Report is published (in violation of Danny Clayton's Constitutional Rights) Danny Clayton wishes Exhibit A attached hereto to be incorporated into the publication as Danny Clayton's response to the report.

To start let me say that I never thought that a few disgruntled employees could bring this much grief to an individual and his family. The things that I have experienced over this matter have at times been almost unbearable. It has been an extreme emotional strain as well as a financial strain. The things that I have been accused of are not true. Let me address each allegation by its referenced category.

#### A. 2009 Summer Program Hiring Improprieties Allegations

Through the discovery process, I obtained evidence, which does include names. This evidence was shared with the Ethics Commission. This evidence along with testimony includes the following:

1. "Summer Applicant A" did not score high enough (rank #32) to be offered a summer job according to IDOT interview scoring sheets that listed the scores for all 60 applicants.
2. The fact that "Summer Applicant A" did not score high enough to be offered a summer job is "leaked" out of the District 9 personnel section by "District 9 IDOT Personnel Employee C". "District 9 IDOT Personnel Employee C" passes this information to her husband, "IDOC Employee D" according to testimony.
3. A threatening telephone call was made on behalf of "Summer Applicant A" to the "District 9 IDOT Person In Charge Of Hiring", according to a log of the telephone call.
4. This threatening telephone call was made by "IDOC Employee D" (who is a local high ranking union official's son), also according to a log of the telephone call.
5. During this threatening telephone call "IDOC Employee D" also informed the "District 9 IDOT Person In Charge Of Hiring", that "Summer Applicant A" was connected to the Governor, according to a log of the telephone call.
6. This threatening phone call from "IDOC Employee D" also included language that indicated that the "District 9 IDOT Person In Charge Of Hiring" might lose his job if "Summer Applicant A" was not hired, according to a log of the telephone call.
7. The score of "Summer Applicant A" was increased to a level that caused "Summer Applicant A" to be offered a summer job, according to IDOT interview scoring sheets that showed the top 22 successful applicants that were hired.
8. The "Assistant to the District 9 IDOT Person In Charge Of Hiring" was the person who scored the summer applications. When she was asked at my hearing how the score of "Summer Applicant A" changed, she stated that she could not remember.
9. The "District 9 IDOT Person In Charge Of Hiring" stated in my presence and in the presence of two other witnesses, that the "IDOT District 9 Personnel Manager" rigged the application score of her brother so that her brother scored a perfect score. Both of these witnesses testified to that fact at my hearing.
10. The score/rank of "Summer Applicant B" was listed at 40<sup>th</sup> according to IDOT interview scoring sheets that listed all 60 applicants. The score/rank of "Summer Applicant B" was increased to a level that caused "Summer Applicant B" to be hired, according to IDOT interview scoring sheets that listed the top 22 successful applicants that were hired. The "Assistant to the District 9 IDOT Person In Charge Of Hiring", who scored the applications, was the only IDOT employee who admitted that she knew "Summer Applicant B". Again

when she was asked how the score of "Summer Applicant B" changed, she stated that she could not remember.

11. I was not brought before the ethics commission accused of manipulating summer applications. I was reminded of that many times at my hearing. Almost every time my attorney tried to bring up the above mentioned irregularities with the scoring that I obtained during the discovery process, an effort was made to suppress this evidence based on relevance.
12. The "District 9 IDOT Person In Charge Of Hiring" told the ethics commission that I told him to lie to investigators. I told the ethics commission that I did not. It was his word against mine. There was no other evidence to substantiate his accusation. The ethics commission ruled against me on that one allegation. I still disagree with their decision.
13. Bottom line is, "Summer Applicant A" did not initially score high enough to receive a job. A threatening telephone call was made to the "District 9 IDOT Person In Charge Of Hiring" on behalf of "Summer Applicant A". The score of "Summer Applicant A" is increased. "Summer Applicant A" receives a job. The group responsible for this improper action each had something to hide. They evidently decided to throw me under the bus 4 months after the fact when the "District 9 IDOT Person In Charge Of Hiring" was "tipped off" (informed) that the 2009 summer hiring was going to be looked at more closely. I have a copy of a report where he stated that he was informed.
14. At my hearing, "OEIG Employee E" was asked by my attorney, "And did you ever investigate any part of the 'Summer Applicant A' issue?" "OEIG Employee E" replied, "As best I recall that wasn't brought to our attention." The "Assistant to the District 9 IDOT Person In Charge Of Hiring" reported the log of the threatening telephone call involving "Summer Applicant A" to the OEIG on 8-19-2009, 4 months after it occurred. Since I have a copy of this OEIG report, obviously it was brought to the attention of the OEIG. By "OEIG Employee E" making that statement, it appeared to me that the OEIG did not investigate the "Summer Applicant A" issue. I wasn't satisfied with that answer, so I made a FOIA request to the OEIG asking them if the "Summer Applicant A" issue was ever investigated. I was informed by the OEIG that the OEIG must decline my request. Therefore as of this date, it remains a mystery. By the way, both "Summer Applicant A" and "Summer Applicant B" now (2013) have state jobs with IDOC. Imagine that !
15. None of the other allegations listed were brought to the ethics commission. "OEIG Employee E" stated at my hearing that there was not enough evidence to pursue the other allegations.
16. Finally, I would like to make it clear to everyone reading this document that the "District 9 IDOT Person In Charge Of Hiring" did not report to me. He reported to the Regional Engineer who was the same person that I reported to. In other words, the "District 9 IDOT Person In Charge Of Hiring" was not in my chain of command.

#### B. Time Abuse Allegation

Approximately one half of the people I managed worked in the field. During the time period the OEIG has indicated, I spent time in the field on Illinois Route 34 between the Galatia Mine and the intersection of Illinois Route 34 and Illinois Route 146 at Humm Wye. There were approximately 200 coal trucks per day using this route. We had bridge deck beams fracturing

and the pavement failing. I received numerous complaints, probably more than normal because more people knew me in that area. We had loaded coal trucks driving in the passing lane for long stretches just to avoid the bad pavement in the southbound or loaded lane. We had loaded coal trucks driving across bridges in the left or passing lane to avoid bad bridge approaches that had failed in the loaded or southbound lane. It was just an accident waiting to happen. I was not going to wait until someone got killed to repair or fix a problem. The bridges were inspected on a rotation by District 9 IDOT bridge inspectors. (Throughout this whole investigation, there seemed to be some confusion about whether District 9 bridge inspectors are structural engineers. The District 9 bridge inspectors are not structural engineers. In fact, District 9 does not even have any structural engineers on its staff, unless that has changed since January 2011) I visually inspected the bridges along this route for issues that might otherwise go unnoticed for a period of time. I visually inspected the pavement for failures that needed repair before we had a catastrophe. If I saw what I thought was a problem, I would call District 9 Operations to come and take a look immediately instead of waiting for either the next normal inspection cycle or someone to just "stumble" across the problem. According to the problem, I might also contact and inform the at large field engineer. Most of my time time spent on the IL 34 project was spent in this manner. I also visited the active job sites where bridges were being reconstructed. A lot of the times I drove through the worksite to see how things were progressing, but some of the time I stopped and talked to the workers and/or the engineer in charge of that project. Some of the time I spoke with the at large field engineer who was over a number of the projects including the IL 34 projects. Almost all of these visits were unannounced. At an IDES unemployment hearing, the engineer in charge at the IL 34 bridge construction sites, when he was finally allowed to fully explain himself, stated that he was only at the construction sites approximately half the time since he spent the other half of the time at his construction office which is far removed from the construction job sites. If I drove through during this half of the time, he would not have seen me. If he was at one of the other construction sites, he also would not have seen me. If he was busy under the bridge or on a deck pour, etc., he may not have seen me. The engineer in charge even stated that he did not record the times that he saw me drive through the construction sites as he did not consider a drive through as a site visit. I had statements from three other IDOT construction personnel referencing visits that I made to various IDOT sites. The IDES referee stated that I spent time on the project, and I plainly disclosed that I was doing so each pay period when I submitted my time to my superiors for their review.

### C. IDOT Employment Posting Revisions Allegation

District 9 IDOT had a shortage of engineers in its construction section due to retirements, promotions, transfers to other bureaus at District 9 and transfers to other Districts within IDOT. At some point I asked the Implementation Engineer to compile a list of the personnel losses to the construction section. This deficiency of engineers in the construction section caused District 9 for the first time to have to hire consultants to make up the difference at a higher cost to the taxpayers. I discovered that IDOT has hired engineers in the past who were not civil engineers. In fact, District 9 IDOT has engineers on staff who are not civil engineers and who are performing very well. Ultimately IDOT needs transportation engineers. Any engineer, including civil engineers, with the proper training and experience can become transportation engineers. Along with not having enough engineers in the construction section at District 9, IDOT was under tremendous pressure to hire minority engineers. IDOT staff even took recruitment trips to Jamaica and other far removed places from Illinois to recruit. I asked the question why didn't we hire minorities from Illinois. I was told that there were not enough minority civil engineers available in Illinois. My suggestions were as follows to deal with these issues:

1. Require an Engineering Degree from an ABET accredited college. (Not just a civil engineering degree) This would create a larger pool of engineers to choose from. This would also create a larger pool of minority engineers to choose from. This should also create a larger pool of minority engineers from Illinois to choose from. Since the degree would have to come from an ABET accredited college, the graduate engineers would be able to test and obtain their professional engineering license.
2. Let's try to hire a few engineers who already had construction experience with roads and bridges. It takes time to train new engineers fresh out of college. Depending on the individual, a new graduate might take 2 to 3 years before you would even think of putting him/her in charge of a construction project. With our deficiency in the construction section, we needed a few new engineers who could hit the ground running. The only way I know to accomplish this is to ask a question or two that pertains to experience.

Bottom line is, any job posting reflecting my suggestions had to be approved by people higher than me. A proposed job posting of this nature never made it off the "drawing board" to an actual posting. Evidently I had stepped on someone's sacred cow's toes within IDOT. Also, just for the record, my son was never hired as an engineer for IDOT. My son never participated in an interview for an engineering job at IDOT. There are, however, numerous instances of family members working at IDOT throughout the state. Let's take a closer look at my accusers who are employees at IDOT. One has a father-in-law working at IDOT. One has a daughter working at IDOT. One has a brother and a nephew working at IDOT. One has two brothers and a nephew working at IDOT. My supervisor's sister worked at IDOT. When my supervisor was promoted into the position of Regional Engineer, IDOT changed the organizational chart so her sister would not report directly to her. Even after this organizational change, my supervisor was still the direct supervisor of her sister's supervisor. The list could go on.

#### D. Consultant Ranking Improprieties Allegation

Consultant selection at IDOT is a peculiar process to say the least. When I arrived at IDOT in 2003, two engineers at District 9 seemed to control all of the consultant rankings. Between listening to the "office snitches", office talk in general, consultant's comments, and my own observations, it became very clear that if a consultant didn't have an in with "Engineer F" for the roadway work or with "Engineer G" for the bridge work, they were going to be on the outside looking in as far as being ranked at the top. The consultant rankings are very subjective. A large portion of the rankings are subject to one's opinion. It is not a  $2 + 2 = 4$  proposition. I saw that these two engineers were favoring firms that they "liked" and were freezing out firms that they "did not like". (These two engineers are two of my accusers, by the way.) According to the spec book the District's ranking can include the distance a consulting firm's location is from the proposed job location in District 9. A firm located closer to the job location would receive a higher ranking number in this category versus a firm that is located farther away from the job location. When I started at IDOT, District 9 was not using this category as part of their ranking criteria. All I did was ask why? In my opinion, local firms were not getting a fair shake and in turn the taxpayers were not getting a fair shake. When a consulting firm is hired that is not in the district, i.e. close to the worksite, 10 to 20 percent or more of the total amount of the contract might be spent on travel, lodging, per diem, etc. I'm not in any way saying that a consulting contract should go to a local firm just because it may be located closer, but not to consider a firm's location in respect to the job location when selecting a consultant is illogical and again not fair to the taxpayers. In order to have a proper check and balance, my supervisor, my immediate subordinate and I collectively started reviewing the preliminary rankings that were generated by "Engineer F" and "Engineer G". These two engineers became extremely irritated that they now could not solely make this determination and presumably "take care" of their buddies.

Ultimately, my supervisor, the Regional Engineer had the final call with respect to the district's recommendation. The thing that makes this whole process even more peculiar and what some might label as ridiculous, is the fact that the district's recommendations are not in any shape or form binding on the actual Springfield IDOT selection committee. The selection committee often chose firms that were not the top picks of the IDOT districts. I remember that on one high profile job in District 9 that had a high engineering fee, we had a firm out of Chicago put in for the job that I had never heard of before. If I remember correctly, District 9's recommendation had this firm ranked around #7 or #8. They definitely would not have received the job if the selection committee had gone by District 9's rankings. They were selected by the selection committee anyway. To make this allegation even more absurd, the OEIG has listed in their complaint that the IDOT Director of Highways, who chairs the selection committee, as saying that Mr. Clayton's conduct did not concern her because she believed he had "little influence" over the Selection Committee's review of the rankings and its ultimate determination. Since she was the chairman of the selection committee, I would venture to say that she was in the driver's seat on determining the consultants selected and would definitely be the person to know that I had "little influence" over the process. And I would agree with her, I had little or no influence over the selection process.

#### E. Failure to Disclose Outside Employment Allegation

First of all, I'd like to give you a little background on this matter. When I arrived at IDOT on October 1, 2003, I had an agreement in place with Southern Illinois Land Co. to help them as needed as an advisor. I was also serving as the Harrisburg Township Supervisor, a part time elected position. There was not at that time a requirement to seek approval for having outside employment. When this "outside employment" requirement came into effect at a later date, I submitted the proper form stating that I had been performing an advisory function for Southern Illinois Land Co. since 10-1-2003. This form was properly submitted as required with all appropriate signatures. Even after I told the OEIG that I had submitted the form, the OEIG still accused me of not submitting this form. I asked the District 9 IDOT Personnel Manager if a copy of my outside employment form was on file. She took out my file and told me my outside employment form was in fact on file. I asked her for a copy which she provided. As it turns out, she is the person that initially told the OEIG that I had not submitted the form. She was not being truthful. The "IDOT District 9 Person In Charge Of Hiring" told the OEIG that I did not submit this form until 10-19-2010. He was not being truthful.

After I started at IDOT, I asked the IDOT assistant chief counsel to check to make sure that there was not a conflict of interest with my elected position. After checking, he informed me that it was not a conflict. IDOT was well aware that I held this elected position. I was not trying to hide that fact. I made the OEIG well aware of the fact that I had contacted IDOT Chief Counsel's office about this issue. Each year I filed Statements of Economic Interests with the Illinois Secretary of State as required. On these statements I listed both "outside" positions. The OEIG was aware of that. The OEIG contended that these statements are never seen by IDOT. That is not true. These statements are not sent directly to the Secretary of State, but are sent to IDOT Chief Counsel, Ethics Officer according to Section 35 of the State Gift Ban Act which requires that the IDOT Ethics Officer review all Statements of Economic Interests completed by IDOT employees before they are submitted to the Secretary of State's office. I had determined that I did not need to submit an outside employment form for this part time elected position. Nevertheless, IDOT was fully aware from the start that I held this part time elected position. After the OEIG indicated on 10-5-2010 that in their opinion I needed to submit this form, I did not debate the issue with them further. I submitted this form on 10-6-2010, the very next day.



I grew up in Southern Illinois. I have a great deal of respect for the people of Southern Illinois and the struggles they endure. I graduated from the University of Missouri at Rolla which is not only known in the United States, but is known throughout the world as a top notch engineering school. I am a registered professional engineer in the state of Illinois. In 2003 I was asked as a person who had functioned in the real world of profit driven industry, to take a shot at cleaning up some of the waste and inefficiency at IDOT. After having a successful engineering and management career in the private sector for 27 years, I believed that I could bring that experience to the government side of the fence and make a difference. I accepted the position, took the bull by the horns and made a number of needed decisions in different areas that were often unpopular with a number of the rank and file. For example, decisions I made and implemented to eliminate overtime abuse and minimize needed overtime expenditures was one area that really put me into the "alligator tank". After I implemented those decisions, I had alligators coming at me from every angle. It took a great deal of effort just to keep those changes in place. I received no support from the IDOT hierarchy in Springfield on this issue. I usually had questions for the upper level IDOT decision makers if I didn't agree with their actions. I know that I probably became a thorn in their sides, but I was trying to make IDOT a better steward of the taxpayers' dollars. My immediate supervisor told me something during 2010 that turned out to be a reality. She told me that anyone could see that I had saved a great deal of money at District 9 (IDOT). But she also told me that I had stepped on so many toes that I was going to get myself fired. I didn't believe her at the time. I knew that I had stepped on a lot of toes, but where in the world do you get fired for saving money for the owners of the company (in this case the taxpayers). The answer is, the State of Illinois.

In conclusion, this whole ordeal has been very frustrating. I regret that it has left me a bit more cynical and less confident that our state government will ever clean up its act. I do, however, firmly believe that my management of District 9 started to accomplish some of the things that most private businesses demand and what the taxpayers deserve. It has also left a small footprint for some of the bigger things that can be accomplished at IDOT.